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Takehiro Nishiyama

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EXAMINER

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1 RECORD OF ORAL HEARING
2
3 UNITED STATES PATENT AND TRADEMARK OFFICE
4

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6 BEFORE THE BOARD OF PATENT APPEALS
7 AND INTERFERENCES
8

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10 Ex parte TAKEHIRO NISHIYAMA
11

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13 Appeal 2008-0765
14 Application 09/874,057
15 Technology Center 3600
16

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18 Oral Hearing Held: July, 10, 2008
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22 Before HUBERT C. LORIN, ANTON W. FETTING, and
23 STEVEN D.A. McCARTHY, Administrative Patent Judges
24

25
26 ON BEHALF OF THE APPELLANT:
27

28 KEVIN M. McKINLEY, ESQUIRE
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34 The above-entitled matter came on for hearing on Thursday, July 10, 2008,
35 commencing at 9:44 a.m., at the U.S. Patent and Trademark Office, 600
36 Dulany Street, Alexandria, Virginia, before Dawn A. Brown, Notary Public.

PROCEEDINGS

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THE USHER: Calendar Number 33, Mr. McKinley.

4

MR. McKINLEY: Good morning.

5

JUDGE LORIN: Good morning, counsel. This is Appeal Number

6

2008-0765?

7

MR. McKINLEY: Correct.

8

JUDGE LORIN: And your name is Kevin McKinley,

9

M-C-K-I-N-L-E-Y.

10

MR. McKINLEY: Correct.

11

JUDGE LORIN: Good morning, counsel.

12

MR. McKINLEY: Good morning.

13

JUDGE LORIN: We're familiar with the record. When you are

14

ready, you have 20 minutes. You may proceed.

15

MR. McKINLEY: Thank you.

16

Before I just give a brief overview of the invention, the issue of the

17

112 second paragraph --

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JUDGE FETTING: Could you speak up a little bit? I'm having

19

trouble hearing you.

20

MR. McKINLEY: The issue of the 112 second paragraph that was

21

discussed in the brief and reply, I think after reviewing it for this hearing that

22

it would be better for us to amend the claim to clarify that issue. So I don't

23

plan on discussing it.

24

I think at the appropriate time after the appeal process is over, I think

25

we can just clarify that issue with an amendment. So I don't plan on

26

discussing that any more today unless you have any questions regarding that.

1 To the -- actually, first of all, for the -- the invention, just real quick,
2 the inventor has found an idea of renting construction equipment, which is a
3 little different from, let's say, car rental. Construction equipment has
4 different features that can be added, different types of wheels or tracks,
5 things like that.

6 And there appears to be a problem in the field of being able to match
7 up exactly what you want, when you want it, and things like that. So the
8 invention is really consolidating all of that information, providing it to
9 someone who wants to rent the vehicle, and allowing them to optimize what
10 they need, when they need, things like that, to get the machine that they
11 want.

12 And this idea of the invention is embodied in our independent claim,
13 which is Claim 17, and the particular feature in Claim 17 -- actually, one
14 more thing about the invention.

15 The way it is displayed and provided to the potential renter is
16 important, again, for the features that you can get from construction
17 equipment as opposed to something else that is generic as a car rental,
18 minivan rental, things like that.

19 And that idea of how to provide it to the user and display it is, again,
20 in Claim 17, means for providing the second network terminal, which is the
21 one the potential renter is using, with information related to the construction
22 machine for rent.

23 Now, this information is provided as a calendar displaying
24 information related to the rental situation. The rental situation including
25 whether the machine is rented, vacant, under negotiation, or out of operation
26 or maintenance at least during the period corresponding to the potential

1 renter timeframe input.

2 And this is means for providing -- so it is clear, as a 112 sixth
3 paragraph issue -- and our arguments are it is provided in the specification.

4 Starting really at the end of Page 10 onto Page 11, the potential renter
5 inserts the information that they desire, the type of machine, the time period,
6 things like that, hit the execute search button, and the network server then
7 starts the search after it compiles the information based on the inputted
8 information.

9 Starting on Line 9 of Page 11, it says the search itself is displayed on a
10 screen. It can be displayed in a couple of ways. Figure 4 is a list and Figure
11 5 is a calendar.

12 If you look at Figure 5 of the present invention, you'll see the
13 information regarding the particular type of machine as well as whether it is
14 rented, vacant, under negotiation, or whether it is in service is displayed. I
15 don't have that figure in front of me.

16 And so the -- this is the way -- the means for providing this
17 information to the renter is provided.

18 And our argument is that there is -- the argument against the examiner
19 is he seems to have stopped after means for providing, whereas he didn't
20 take into account the remaining features of the claim, which are providing
21 the information as a calendar, providing the information regarding rented,
22 vacant, operation or -- I'm sorry -- and whether it is in negotiation.

23 JUDGE FETTING: Well, I guess when I read that, I took the
24 examiner to be saying that he did not see any structure for actually
25 converting what was -- the data, which would have been data such as might
26 be coming out of the Janssen reference into a format that then you show

1 being portrayed in some figure.

2 So given that this is a structural claim, it seems as though the
3 examiner was saying absent any structure for actually making that
4 conversion, how it is displayed is a just a display. That is not the means;
5 that is the result. And so absent any specific recitation of the structure
6 behind the means, any means is appropriate.

7 MR. McKINLEY: I didn't see in the examiner's answer if he was
8 looking for a microprocessor or something describes the --

9 JUDGE FETTING: In terms of programming. There is no flowchart
10 that shows -- at least I didn't see a flowchart; perhaps you can show me --
11 that shows how the data that would come out of the database would be
12 converted into the format for presentation in your diagram.

13 MR. McKINLEY: No. I'll agree there is no flowchart.

14 JUDGE FETTING: Is there a textural description of that flow?

15 MR. McKINLEY: I think on Page 11 after the information input, the
16 description I found that best describes it is that the network server starts
17 searching and then after that it says at this time the server searches the
18 information related to the specification, rental situation, location for rent
19 using information related to the specification, rental period, location as the
20 search items and then the search is displayed.

21 I guess, you know, it is an algorithm within the computer/special
22 processor of the server to generate -- the structure would be the algorithm it
23 is using to process the information input and then --

24 JUDGE FETTING: But that algorithm is not in the specification?

25 MR. McKINLEY: That description of the algorithm is not in the
26 specification.

1 JUDGE FETTING: Thank you.

2 MR. McKINLEY: And so, I guess, the -- again, our argument would
3 be that there is the structure of processing information as a physical
4 structure, again, after the point we just talked about.

5 And so that is our main argument that it is not -- if all the examiner
6 had to find was a means for providing the information to a second terminal,
7 you could use a cable or something. That could be a means for providing.

8 Again, it just seems like in the form of a calendar is how our
9 information is displayed. That is after it is physically processed by the
10 computer, and the memory holds the information, and then how it is
11 eventually displayed. That is clearly discussed in the spec.

12 And so, you know, that is -- those are our arguments. But, again, I'll
13 agree the algorithm is not discussed; it is just a result of the processing of the
14 computer microchip. That is all I have as far as arguments.

15 JUDGE FETTING: I have no other questions.

16 JUDGE LORIN: Counsel, we have no questions. Thank you and
17 we'll take your comments under advisement.

18 MR. McKINLEY: Thank you very much.

19 (Whereupon, the proceedings at 9:53 a.m. were concluded.)